



Construction April 2021

Welcome to the Spring 2021 edition of our Quarterly Construction e-bulletin. It is hard to believe that COVID-19 has been the topic of interest in our bulletins for the last year. The industry has however adapted to new ways of working to accommodate social distancing and has been able to continue throughout this latest lockdown.

From speaking to a number of our clients and contacts we are hearing that the short to medium term order books look good but it is the longer term outlook that is uncertain. Only time will tell the true impact that COVID-19 has had on the industry.

Following on from the success of our Q&A blog series on adjudication, we have been running a new blog series on payment in the construction industry. We have included one of our latest blogs from this series in this bulletin and you can access all previous blogs in the series from this link.

We hope that this bulletin will continue to keep you updated with issues affecting the construction industry and changes in law as they happen. In the meantime, if there are any issues you would like to see covered in future editions or wish to discuss anything in this edition please do not hesitate to contact me or one of our construction team.

[Sandra Cassels](#), Partner



Why are developers still being short changed on performance bonds?



I wrote an article for Scottish Construction in July 2019 highlighting that because of the wording of the ABI Model Form of Guarantee Bond, and the manner in which certain sureties (bond issuers) choose to interpret that wording, some developers whose contractors had gone bust were being told that they would have to wait until after the Final Account had been agreed to receive the bond amount. Or, the developers were being told, you can have the money now, but it will be far less than the 10% of the Contract Sum that you were expecting. Since then, nothing has really changed.

Author: [Jonathan Seddon](#)

[Read More](#)

Can I re-adjudicate a dispute?

It is a well-established principle that you cannot bring an adjudication against a party where *"the same or substantially the same"* dispute has already been adjudicated on. This is supported by Paragraph 9(2) of the Scheme which states that an adjudicator lacks jurisdiction to decide on the same issue and is required to resign.

It does go without saying that the issue of what constitutes the same or substantially the same dispute can be open to interpretation.

Author: [Sandra Cassels](#)

[Read More](#)



Enforcing adjudicators' decisions in Scotland



Prescription is a rule of law where obligations can expire if they are not actioned within a certain timeframe. The length of time you have to make a claim can vary, but it is most commonly five years.

Imagine you performed work for a client in 2014. If they failed to pay you for it, your client is likely in breach of contract. If you brought an action for breach of contract in 2017, three years after you were left out of pocket, you would have likely been able to claim. However, if you were to try and bring that same action now in 2020, you may find that your right to a claim has disappeared because of prescription.

Author: [Julie Scott-Gilroy](#)

[Read More](#)

Can you claim for business interruption insurance?

Landlords, Tenants and businesses that operated from their own freehold premises alike have struggled throughout Covid-19 and the associated lockdowns, even where deferred or waived Rent arrangements or mortgage payment relief were possible by negotiation between the parties. For those who had insurance for business interruption (BI), but whose policy providers refused to pay out (where some insurers had), this was particularly frustrating. Even those whose policies were taken out to protect against property damage may have BI insurance as a result of the Supreme Court's decision regarding the clauses mentioned below.

Author: [Sarah Pearson](#)

[Read More](#)



Contaminated Land: Liability or Opportunity?



In this webinar, Nick Atkins joins Isabella Marshall and Susan Bell from [Mabbett](#) to discuss how the development of Brownfield land can present opportunities in the context of the Net Zero agenda.

Author: [Nick Atkins](#)

[Read More](#)

Do I need to issue an application for payment?

In short, this depends on the specific terms of your contract. The Act doesn't require construction contracts to contain payment application clauses but it acknowledges that contracts may permit or require the payee to make a payment application. Many standard form contracts have such clauses.

Author: [Julie Scott-Gilroy](#)

[Read More](#)



Right to work and sub-contracting



I've spent the start of 2021 helping clients understand the implications of the new immigration system. In the construction sector this has involved considering the position of sub-contractors who rely on labour from Europe. Until the end of last year this was a simple process, as free movement allowed sub-contractors to bring workers from Europe without considering visa issues. However, under the new immigration system, the position is much more complicated.

Author: [Stuart McWilliams](#)

[Read More](#)

Success Fee Arrangements for SMEs

New service created to help Scottish SMEs access legal advice at reduced financial risk

Morton Fraser, one of the largest independent law firms in Scotland, has launched a new payment model as part of its commercial litigation practice to enable businesses to pursue disputes without significant financial risk.

Total annual losses to small businesses in the UK from legal problems are estimated at £40bn, with over one million individuals in small businesses suffering ill health as a result*. It is hoped that some of the 350,000 SMEs in Scotland will see this as a cost-effective way of pursuing claims.

Click [here](#) to read more.

WELCOME TO CLARITY

Clear legal advice for businesses, public sector, individuals and families.

Edinburgh: 0131 247 1000
Glasgow: 0141 274 1100
info@morton-fraser.com



[Privacy notice](#) | www.morton-fraser.com | [Manage Preferences](#)

The contents of this update are for information only and are not intended to be construed as legal advice. Morton Fraser accepts no responsibility for the content of any third party websites to which this update refers.